

Introduced by Senator Torlakson

February 15, 2005

An act to amend Sections 65583, 65584.1, and 66016 of, and to repeal Sections 65586 and 65588.1 of, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 253, as introduced, Torlakson. Housing elements: fees.

The Planning and Zoning Law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. One part of the housing element is an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. The assessment includes the locality's share of regional housing needs. That share is determined by the appropriate council of governments or by the Department of Housing and Community Development, subject to revision by the department.

The Planning and Zoning Law also authorizes a council of governments to charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing the regional housing needs pursuant to a city or county's housing element.

This bill would also authorize a council of governments to charge a fee for determining shares of the existing and projected regional housing need for cities, counties, and subregions at all income levels and for subsequent revisions of specified housing elements. The bill would also repeal obsolete provisions pertaining to housing elements.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a qualification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with disabilities as identified in the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and

1 from meeting the need for housing for persons with disabilities
2 identified pursuant to paragraph (6).

3 (5) An analysis of potential and actual nongovernmental
4 constraints upon the maintenance, improvement, or development
5 of housing for all income levels, including the availability of
6 financing, the price of land, and the cost of construction.

7 (6) An analysis of any special housing needs, such as those of
8 the elderly, persons with disabilities, large families, farmworkers,
9 families with female heads of households, and families and
10 persons in need of emergency shelter. The department shall adopt
11 regulations to implement this paragraph, including parts of this
12 paragraph determined by the department or any other state
13 agency or a court to be a reimbursable state mandate. For any
14 revision of a housing element required pursuant to Section 65588
15 that occurs subsequent to the adoption of those regulations, any
16 actions undertaken by the locality beyond those specified in the
17 regulations are at that locality's option and are not required by
18 this section.

19 (7) At the option of local government, an analysis of
20 opportunities for energy conservation with respect to residential
21 development.

22 (8) An analysis of existing assisted housing developments that
23 are eligible to change from low-income housing uses during the
24 next 10 years due to termination of subsidy contracts, mortgage
25 prepayment, or expiration of restrictions on use. "Assisted
26 housing developments," for the purpose of this section, shall
27 mean multifamily rental housing that receives governmental
28 assistance under federal programs listed in subdivision (a) of
29 Section 65863.10, state and local multifamily revenue bond
30 programs, local redevelopment programs, the federal Community
31 Development Block Grant Program, or local in-lieu fees.
32 "Assisted housing developments" shall also include multifamily
33 rental units that were developed pursuant to a local inclusionary
34 housing program or used to qualify for a density bonus pursuant
35 to Section 65916.

36 (A) The analysis shall include a listing of each development
37 by project name and address, the type of governmental assistance
38 received, the earliest possible date of change from low-income
39 use and the total number of elderly and nonelderly units that
40 could be lost from the locality's low-income housing stock in

1 each year during the 10-year period. For purposes of state and
2 federally funded projects, the analysis required by this
3 subparagraph need only contain information available on a
4 statewide basis.

5 (B) The analysis shall estimate the total cost of producing new
6 rental housing that is comparable in size and rent levels, to
7 replace the units that could change from low-income use, and an
8 estimated cost of preserving the assisted housing developments.
9 This cost analysis for replacement housing may be done
10 aggregately for each five-year period and does not have to
11 contain a project-by-project cost estimate.

12 (C) The analysis shall identify public and private nonprofit
13 corporations known to the local government which have legal
14 and managerial capacity to acquire and manage these housing
15 developments.

16 (D) The analysis shall identify and consider the use of all
17 federal, state, and local financing and subsidy programs which
18 can be used to preserve, for lower income households, the
19 assisted housing developments, identified in this paragraph,
20 including, but not limited to, federal Community Development
21 Block Grant Program funds, tax increment funds received by a
22 redevelopment agency of the community, and administrative fees
23 received by a housing authority operating within the community.
24 In considering the use of these financing and subsidy programs,
25 the analysis shall identify the amounts of funds under each
26 available program which have not been legally obligated for
27 other purposes and which could be available for use in preserving
28 assisted housing developments.

29 (b) (1) A statement of the community's goals, quantified
30 objectives, and policies relative to the maintenance, preservation,
31 improvement, and development of housing.

32 (2) It is recognized that the total housing needs identified
33 pursuant to subdivision (a) may exceed available resources and
34 the community's ability to satisfy this need within the content of
35 the general plan requirements outlined in Article 5 (commencing
36 with Section 65300). Under these circumstances, the quantified
37 objectives need not be identical to the total housing needs. The
38 quantified objectives shall establish the maximum number of
39 housing units by income category that can be constructed,
40 rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) (A) Identify adequate sites which will be made available through appropriate zoning and development standards and with services and facilities, including sewage collection and treatment, domestic water supply, and septic tanks and wells, needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing in order to meet the community's housing goals as identified in subdivision (b).

(i) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households.

(ii) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(B) For purposes of this paragraph, the phrase “use by right” shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial or industrial uses and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(C) The requirements of this subdivision regarding identification of sites for farmworker housing shall apply commencing with the next revision of housing elements required by Section 65588 following the enactment of this subparagraph.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local

government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

~~(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.~~

~~(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.~~

SEC. 2. Section 65584.1 of the Government Code is amended to read:

65584.1. Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations pursuant to ~~Section~~ *Sections* 65584, 65584.01, 65584.02, 65584.03, 65584.04, 65584.05, and 65584.07. A city, county, or city and county may charge a fee, not to exceed the amount charged in the aggregate to the city, county, or city and county by the council of governments, to reimburse it for the cost of the fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose the fee pursuant to Section 66016, except that if the fee creates revenue in excess of actual costs, those revenues shall be refunded to the payers of the fee.

SEC. 3. Section 66016 of the Government Code is amended to read:

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as

1 part of a regularly scheduled meeting. Notice of the time and
2 place of the meeting, including a general explanation of the
3 matter to be considered, and a statement that the data required by
4 this section is available, shall be mailed at least 14 days prior to
5 the meeting to any interested party who files a written request
6 with the local agency for mailed notice of the meeting on new or
7 increased fees or service charges. Any written request for mailed
8 notices shall be valid for one year from the date on which it is
9 filed unless a renewal request is filed. Renewal requests for
10 mailed notices shall be filed on or before April 1 of each year.
11 The legislative body may establish a reasonable annual charge
12 for sending notices based on the estimated cost of providing the
13 service. At least 10 days prior to the meeting, the local agency
14 shall make available to the public data indicating the amount of
15 cost, or estimated cost, required to provide the service for which
16 the fee or service charge is levied and the revenue sources
17 anticipated to provide the service, including General Fund
18 revenues. Unless there has been voter approval, as prescribed by
19 Section 66013 or 66014, no local agency shall levy a new fee or
20 service charge or increase an existing fee or service charge to an
21 amount which exceeds the estimated amount required to provide
22 the service for which the fee or service charge is levied. If,
23 however, the fees or service charges create revenues in excess of
24 actual cost, those revenues shall be used to reduce the fee or
25 service charge creating the excess.

26 (b) Any action by a local agency to levy a new fee or service
27 charge or to approve an increase in an existing fee or service
28 charge shall be taken only by ordinance or resolution. The
29 legislative body of a local agency shall not delegate the authority
30 to adopt a new fee or service charge, or to increase a fee or
31 service charge.

32 (c) Any costs incurred by a local agency in conducting the
33 meeting or meetings required pursuant to subdivision (a) may be
34 recovered from fees charged for the services which were the
35 subject of the meeting.

36 (d) This section shall apply only to fees and charges as
37 described in Sections 51287, 56383, 57004, 65104, 65456,
38 65584.1, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this
39 code, Sections 17951, 19132.3, and 19852 of the Health and

1 Safety Code, Section 41901 of the Public Resources Code, and
2 Section 21671.5 of the Public Utilities Code.

3 (e) Any judicial action or proceeding to attack, review, set
4 aside, void, or annul the ordinance, resolution, or motion levying
5 a fee or service charge subject to this section shall be brought
6 pursuant to Section 66022.

7 SEC. 4. Section 65586 of the Government Code is repealed.

8 ~~65586. Local governments shall conform their housing~~
9 ~~elements to the provisions of this article on or before October 1,~~
10 ~~1981. Jurisdictions with housing elements adopted before~~
11 ~~October 1, 1981, in conformity with the housing element~~
12 ~~guidelines adopted by the Department of Housing and~~
13 ~~Community Development on December 7, 1977, and located in~~
14 ~~Subchapter 3 (commencing with Section 6300) of Chapter 6 of~~
15 ~~Part 1 of Title 25 of the California Administrative Code, shall be~~
16 ~~deemed in compliance with this article as of its effective date. A~~
17 ~~locality with a housing element found to be adequate by the~~
18 ~~department before October 1, 1981, shall be deemed in~~
19 ~~conformity with these guidelines.~~

20 SEC. 5. Section 65588.1 of the Government Code is repealed.

21 ~~65588.1. (a) The planning period of existing housing~~
22 ~~elements prepared pursuant to subdivision (b) of Section 65588~~
23 ~~shall be extended through the housing element due date~~
24 ~~prescribed in subdivision (c) of Section 65588. Local~~
25 ~~governments shall continue to implement the housing program of~~
26 ~~existing housing elements and the annual review pursuant to~~
27 ~~Section 65400.~~

28 ~~(b) The extension provided in this section shall not limit the~~
29 ~~existing responsibility under subdivision (b) of Section 65588 of~~
30 ~~any jurisdiction to adopt a housing element in conformance with~~
31 ~~this article.~~

32 ~~(c) It is the intent of the Legislature that nothing in this section~~
33 ~~shall be construed to reinstate any mandates pursuant to Chapter~~
34 ~~1143 of the Statutes of 1980 suspended by the Budget Act of~~
35 ~~1993-94.~~